



P.O. Box 1596 Patterson, CA 95363-1596

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November 22, 2010

Timothy G. Rust  
M&I WSP Program Manager  
Bureau of Reclamation  
2800 Cottage Way  
Sacramento, CA 95825

Via FAX: (916) 978-5290  
Email: [TRust@usbr.gov](mailto:TRust@usbr.gov)

Re: October 21, 2010 Draft Municipal and Industrial Water Shortage Policy

Dear Mr. Rust:

The following comments on the above referenced draft policy are provided on behalf of the Del Puerto Water District ("District").

We understand from your statements at the October 28, 2010 workshop that Reclamation will prepare a separate new document under the National Environmental Policy Act (NEPA) that will analyze and evaluate the effects of this proposed policy on irrigation contractors. Because we believe the water supply impacts on south of the Delta irrigation contractors will be significant, we would ask that the extent of this reduction be modeled and clearly identified. Furthermore, this new documentation needs to analyze and measure the effects of this policy against the true, no-policy, no-M&I preference alternative. We look forward to this analysis and reserve our right to comment on this new document.

We have already commented on prior drafts of this policy, both verbally and in writing, and have attached our comment letters of November 30, 2000, January 9, 2001 and November 26, 2001 for your consideration in this current regard. We have also attached our letter dated April 22, 2009 that provided our comments on a prior proposed Draft EA/FONSI your consideration.

This proposed policy is similar to prior draft policies, making only minor modifications, and would have substantially the same negative impacts on irrigation contractors as noted in this prior correspondence. As pointed out therein, this proposed policy cannot be justified and enforced in light of Section 9(c) of the 1939 Act. Furthermore, we see nothing in this latest draft that addresses either how this proposed policy can be pursued in light of the applicable law for Reclamation providing municipal water supplies, or how Reclamation intends to mitigate the obvious impacts this proposed policy would have on irrigation contractors.

Accordingly, we encourage you to reconsider this draft policy and develop a new policy that does not interfere with the irrigation purpose of the Project, as described in the attached correspondence. Additionally, we hope and trust that the further evaluation of this proposed policy under NEPA will evaluate, among other things, the true effects of this proposed policy on CVP agricultural contractors located south of the Delta such as the District, particularly in light of the current regulatory constraints on the movement CVP water supplies through the Delta.

Thank you for the opportunity to comment on this proposed policy. If you have any questions regarding our position, please contact me.

Sincerely,

A handwritten signature in black ink, appearing to read "William D. Harrison". The signature is fluid and cursive, with a large, sweeping initial "W".

William D. Harrison, General Manager  
DEL PUERTO WATER DISTRICT

Cc: Board of Directors  
Ernest Conant, Esq.  
CVPWA  
SLDMWA

# Del Puerto WATER District

P.O. Box 98 • Westley, CA 95387-0098

Fax (209) 892-4469 • Phone (209) 892-4470

November 30, 2000

Mr. Lester Snow, Regional Director  
Department of the Interior  
Bureau of Reclamation  
Code: MP-100, Regional Office  
2800 Cottage Way, Room E-1604  
Sacramento, CA 95825-1898

RE: Proposed M&I Water Shortage Policy

Dear Mr. Snow:

We understand that you are considering finalizing a policy regarding M&I water shortages and are seeking comments on a draft prepared on November 20, 2000 draft and circulated at a workshop held on November 21, 2000. Although there have been a number of draft policies over the years, we understand that this is the first time that such a policy is intended to be finalized.

As you know the Del Puerto Water District's contract for 140,210 acre-feet of CVP water is used almost exclusively for irrigation within the District. About half of the irrigated acreage within the District is planted to permanent crops. The reliability of the District's water supplies to irrigate these plantings is crucial to our survival.

We understand that some M&I Contractors are suggesting that the final policy be modified from that set forth in the November 20<sup>th</sup> draft in several respects for the primary purpose of providing greater reliability to M&I Contractors. Insofar as the inevitable result of such changes would be to reduce deliveries to agricultural Contractors, we urge you to reject such suggestions.

In fact, we fail to understand how the M&I Shortage Policy as set forth in a November 20<sup>th</sup> draft and in prior drafts can be justified and enforced in light of Section 9(c) of the 1939 Act (43 USC §485h(c)) which provides in part:

"No contract relating to municipal water supply or miscellaneous purposes or to electric power or power privileges shall be made unless, in the judgment of the Secretary, it will not impair the efficiency of the project for irrigation purposes."

We acknowledge that some priority should be given for M&I purposes that are needed to protect public health and safety, and that fish and wildlife purposes should also be subject to "human health and safety" requirements as has been provided for by Section 3406(b)(2)(C) of the CVPIA. We also acknowledge that there are a few M&I Contractors which historically have had various M&I priority provisions in their contracts which reasonably could have been entered into with a Secretarial determination that such priorities would not impair the efficiency of the project for irrigation purposes.

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Unfortunately, times have changed since those contracts were entered into. Today, the practical effect of granting any such M&I priority is to reduce the quantity of water available for irrigation purposes in many, if not most, years, as opposed to only occasionally during extreme drought conditions. We believe that new contracts and policies should provide an equal footing between irrigation and M&I uses except to the extent that water is needed to meet M&I public health and safety demands during extreme droughts.

We would point out that M&I Contractors do have alternatives if they wish to achieve greater reliability than is otherwise available from the project. They can consider and pursue water reallocation programs, such as Santa Clara has done with the San Luis Delta-Mendota Water Authority and certain of its members. They can also develop and/or participate in water banking programs, such as Santa Clara and other urban agencies have done with Semitropic Water Storage District. The effect of the November 20<sup>th</sup> draft policy, made worse if modified as suggested by some M&I Contractors, would be to provide M&I Contractors with more water at the expense of irrigation supplies. We believe that M&I Contractors should share equally in the water losses to the project resulting from on-going regulatory constraints. To do otherwise only accommodates and encourages urban growth with less expensive CVP supplies to the detriment of hard-working farmers and precious agricultural lands.

We would also like to note that the State Water Project has eliminated M&I priorities under the Monterey Amendments. In the same way that these amendments both allowed for transfer of state water supplies from agriculture to M&I and provided that they would be treated equally in times of shortage, so too should federal supplies provided under CVPIA transfer provisions treat the apportionment of shortages between agricultural and M&I users (i.e. equally).

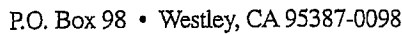
Accordingly, we urge you to reconsider the draft M&I policy and develop a policy which does not impair the irrigation purposes of the Project, except to the extent that supplies are required to meet health and safety needs of our urban areas in times of extreme drought. Furthermore, if you should proceed with a policy similar to that presented in the November 20, 2000 draft, we implore you not shift additional burdens to irrigation as has been suggested by some M&I Contractors. Thank you for the opportunity to comment on this draft policy.

Very truly yours,



William D. Harrison  
General Manager

Cc: John Davis  
Board of Directors  
Ernest Conant  
CVPWA  
SLDMWA



Fax (209) 892-4469 • Phone (209) 892-4470

January 9, 2001

Ms. Betty Riley-Simpson  
Department of the Interior  
Bureau of Reclamation, Regional Office  
2800 Cottage Way  
Sacramento, CA 95825-1898

RE: Proposed M&I Water Shortage Policy (December 22, 2000 draft).

Dear Ms. Riley-Simpson:

We understand that you intend to finalize a policy regarding M&I <sup>water</sup> shortages and are seeking comments on a draft policy dated December 22, 2000.


Our reading of this most recent draft shows little and no substantial change from the November 20<sup>th</sup> draft on which we commented by letter dated November 30, 2000 (copy attached). The current draft policy continues to raise serious and complex legal and policy issues, and by this letter we reiterate and incorporate the comments and concerns detailed in this previous letter.

While we appreciate the fact that proposed policy continues to limit its applicability only to the quantities of projected M&I demand as of September 1994 and maintains that irrigation water converted to M&I use after that date will be subject to the same shortage allocation as irrigation water, our comments and concerns still have not been adequately addressed.

As you know, this draft policy fundamentally reallocates agricultural water service supplies to urban contractors, thereby placing an additional burden on agricultural contractors and the rural communities they support. To our knowledge there has been no analysis of the impacts associated with such a policy and, consequently, no exploration of possible mitigation measures has been undertaken. Without such analysis and consideration, we remain seriously opposed to any policy that would further impair the efficiency of the project for irrigation purposes.

Thank you for the opportunity to provide additional comment on this draft policy.

Very truly yours,

  
William D. Harrison  
General Manager

Cc: Lester Snow  
John Davis  
Ernest Conant  
CVPWA  
SLDMWA

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892-4469 • Phone (209) 892-

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P.O. Box 1596 • Patterson, CA 95363-1596

Fax (209) 892-4469 • Phone (209) 892-4470

November 26, 2001

Bureau of Reclamation  
Attention: Alisha Sterud, MP 400  
2800 Cottage Way  
Sacramento, CA 95825-1898

RE: Comments on Draft CVP M&I Water Shortage Policy

Dear Ms. Sterud:

This letter conveys the comments of the Del Puerto Water District on the draft CVP M&I Water Shortage Policy as noticed in the Federal Register on October 30, 2001.

The current September 11, 2001 draft policy continues to raise serious and complex legal and policy issues, and by this letter we incorporate the comments and concerns detailed in our letter dated November 30, 2000 and reiterated in our letter of January 9, 2001 (both attached). The concerns expressed in these letters remain inadequately addressed and are, in fact, exacerbated by new language and concepts in the current proposed policy.

We note here that while the proposed policy purports to limit its applicability only to the quantities of projected M&I demand as of September 1994 and maintains that irrigation water converted to M&I use after that date will be subject to the same shortage allocation as irrigation water, new language has been added that would allow the conversion of subsequently transferred, assigned or converted agricultural supplies to M&I reliability provided that there are either no, or fully mitigated, adverse effects. We continue to maintain that the proposed policy fundamentally reallocates agricultural water service supplies to urban contractors and further submit that there is no mitigation possible for the inevitable resulting loss of agricultural water supplies. The adverse effects of such a policy on agricultural water supplies are magnified by the application of deeper shortages on an ever-smaller base supply. To include such language is tantamount to suggesting that one can farm without water. There is no justification or rationale for such language. If M&I contractors know that the reliability of converted water retains its original agricultural status as it must to avoid additional impacts, they are in a position to plan for and acquire the quantities they need to assure the desired level of reliability.

The proposed policy is also of serious concern insofar as it provides for adjustments in "historical use" based on "population growth" and/or the "number or demand of industrial, commercial, and other entities the contractor serves". Reclamation has never similarly considered increasing contract supplies or reliability to agricultural contractors based on increased acreage planted to permanent crops or the number of farms or farm families served. The point here is that the proposed policy quite clearly favors urban growth and water supply demand at the direct and ever-increasing expense of irrigation water supplies.

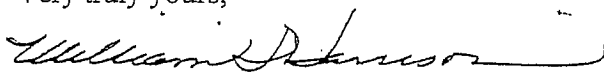
We reiterate that adoption of this proposed policy cannot be justified or enforced in light of Section 9(c) of the 1939 Act (43 USC §485(c)) which provides in part:

"No contract relating to municipal water supply or miscellaneous purposes or to electric power or power privileges shall be made unless, in the judgment of the Secretary, it will not impair the efficiency of the project for irrigation purposes."

The District remains seriously opposed to this and any other policy that would further impair the efficiency of the project for irrigation purposes.

Thank you for the opportunity to provide comment on this proposed policy.

Very truly yours,

A handwritten signature in dark ink, appearing to read "William D. Harrison", with a long, sweeping horizontal stroke extending to the right.

William D. Harrison  
General Manager

Cc: Kirk Rodgers  
John Davis  
Ernest Conant  
CVPWA  
SLDMWA



P.O. Box 1596 • Patterson, CA 95363-1596

Fax (209) 892-4469 • Phone (209) 892-4470

April 22, 2005

Mr. David Lewis  
Bureau of Reclamation  
2800 Cottage Way, MP 730  
Sacramento, CA 95825

(Via FAX 1-916-978-5094)

RE: Comments on Draft Environmental Assessment (EA) and Finding of No Significant Impact (FONSI) for the CVP M&I Water Shortage Policy (Shortage Policy)

Dear Mr. Lewis:

The Del Puerto Water District (District) submits the following comments on the Draft Environmental Assessment for the Central Valley Project M&I Water Shortage Policy dated March of 2005.

The Del Puerto Water District is a CVP contractor located south of the Delta. Its contract providing for up to 140,210 acre-feet of CVP water is used almost exclusively to serve irrigation purposes within the District. CVP water is the sole source of supply for the vast majority of District users. Fully one half of the District's 40,000 irrigated acres are planted to permanent crops. The reliability of the District's water supplies to irrigate these plantings is crucial to our survival and that of the agricultural communities in which we live and who depend upon these supplies for their economic well-being. As such, the District has a vital if not crucial interest in the proposed policy and the subject documents.

### **Comments**

The EA is a seriously flawed document that in no way supports a finding of no significant impact. We strongly urge the Bureau of Reclamation to withdraw the proposed Draft EA and the proposed FONSI, to reconsider the purpose and need for such a policy in view of Reclamation law and to prepare a legally adequate analysis of all of the alternatives.

Previous draft policies, going back to the 1993 draft interim policy up to and including that of September 11, 2001, have raised serious legal issues and policy concerns which the District has detailed in our letters dated November 30, 2000, January 9, 2001 and November 26, 2001 (attached). Not only does it appear that the issues and concerns expressed in our previous comment letters have been totally ignored, they are, in fact, exacerbated by new language and concepts contained in the now proposed alternative.

The newly proposed policy no longer limits its applicability to the quantities of CVP water identified for M&I uses as of September 30, 1994 (as did the September 2001



proposal), but it increases the already significant impact on agricultural water supplies of the prior proposal by applying the policy to the quantities identified under Water Needs Assessments predicated on the amount of water that M&I Contractors estimate could be beneficially used by the year 2025. (Page 1-3) According to the subject documents, these assessments show many M&I contractors equaling or exceeding their full Contract Totals by the year 2025 (Page 1-3) thereby magnifying the policy's adverse effect on agricultural water supplies through the application of ever-greater shortages on an ever-smaller base of irrigation supplies.

The proposed policy fundamentally and, by it own repeated acknowledgement, reallocates agricultural water service supplies to urban contractors and offers no mitigation for the resulting loss of agricultural water supplies. (ES-3, 3-2)

We reiterate our previous claim that adoption of the proposed policy cannot be justified or enforced in light of Section 9(c) of the 1939 Act (43 USC §485(c)) which provides in part:

“No contract relating to municipal water supply or miscellaneous purposes or to electric power or power privileges shall be made unless, in the judgment of the Secretary, it will not impair the efficiency of the project for irrigation purposes.”

While the District has been willing to acknowledge that some priority should be given for M&I purposes that are needed to protect public health and safety, and that fish and wildlife purposes might also be subject to “human health and safety” requirements as has been provided for by Section 3406(b)(2)(C) of the CVPIA, we would also point out that the reason that the OCAP 2004 described the allocation of CVP water supply for the 253 water service contracts and the Sacramento River Settlement Contracts in the following manner:

“Those water service contracts had many varying water shortage provisions. In some contracts, M&I and agricultural use shared shortage equally. In most of the larger M&I contracts, agricultural water was shorted 25% of its contract entitlement before M&I water was shorted, and then both shared shortages equally.” (Page 1-1, 2)

is because there are only a few water service contracts which reasonably could have been entered into with a Secretarial determination that such priorities would not impair the efficiency of the project for irrigation purposes.

We would also grant that “as the CVP system was being developed there were no shortage allocation because actual demands were less than the water supply each year.” (Page 1-2) Unfortunately, as the subject document points out, “water allocations to contractors located south of the Delta have been most affected by changes in operations by legislative and regulatory changes.” (Page 2-1) Today, the practical effect of granting any such M&I priority is to further reduce the quantity of water available for irrigation purposes to contractors located south of the Delta in many, if not most, years, as opposed to only occasionally during extreme drought conditions. The Draft EA seriously errors

when it states that the alternatives will result in "changes for Irrigation CVP water service contractors" in only "9 of the 72 years" modeled. (Page 5-45) It will, in fact, have a significant impact in virtually every year, especially for south of the Delta irrigation contractors. The extent of the total reduction should be modeled and clearly identified in the analysis.

We continue to contend that new contracts and the policies referenced in them, in accord with Reclamation Law and historical contractual language and understanding, should provide an equal footing between irrigation and M&I uses except to the extent that water is needed to meet M&I public health and safety demands during extreme droughts or as can be provided without impact to irrigation supplies.

In this regard, the EA seriously errors in establishing a No Action Alternative baseline as that defined by the operational criteria in the OCAP 2004. (Page ES-3) To our knowledge, no previous draft policy establishing anything other than an equal sharing of shortages between M&I and irrigation water has been the subject of environmental review and the impacts to irrigation supplies of the current No Action Alternative have never been analyzed. The No Action Alternative as the environmental baseline used to measure the impacts of the policy is both legally inadequate and improperly defined. The subject analysis thoroughly masks and minimizes the effects of the proposed alternative, particularly for South of the Delta water contractors, by failing to measure its effects against the true, no-policy, no-M&I preference alternative.

Even without the appropriate baseline analysis, the adverse effects of such a policy on agricultural water supplies are significant. To mention that concepts to increase M&I CVP water service contract deliveries include: "storage of additional water during wet years" along side of reductions of deliveries to Irrigation CVP Water Service Contractors, and then, to immediately dismiss this concept as "not possible with existing facilities", not only begs the question but ignores and serves to dismiss out-of-hand a number of viable concepts. (Pages ES-3, 3-2)

Other alternatives available to M&I Contractors if they wish to achieve greater reliability than is otherwise available from the project are 1) including willing seller/willing buyer transfers provided for under CVPIA, 2) water reallocation programs, such as Santa Clara Valley Water District (SCVWD) has done with the San Luis Delta-Mendota Water Authority and certain of its members, and 3) the development and/or participation in water banking programs, such as SCVWD and other urban agencies have done with Semitropic Water Storage District.

To base a proposed FONSI on the following statement:

"At the expected frequency of no or very little CVP irrigation water deliveries associated with this alternative, it is likely that farmers without affordable and accessible alternative water supplies will be subject to significant financial burdens. Farmers may fallow crops, resulting in lost farm revenue and related jobs. Farmers with permanent crops would be most vulnerable to losing high valued investments. Loss of agricultural employment would affect lower income population and minority

populations more than other populations in the state." (Page 5-45,  
emphasis added)

is not only unjustifiable, it is quite simply incomprehensible.

To adopt such a policy is tantamount to suggesting that one can farm without water. There is no justification or rationale for such taking the proposed policy position. If M&I contractors know that the reliability of existing and converted water supplies retains its original agricultural status, as it must to avoid these unacceptable and significant impacts, they are in a position to plan for and acquire the quantities they need to assure the desired level of reliability.

Reclamation has never similarly considered increasing contract supplies or reliability to agricultural contractors based on increased acreage planted to permanent crops or the number of farms or farm families served. The point here is that the proposed policy quite clearly favors urban growth and water supply demand at the direct and ever-increasing expense of irrigation water supplies.

The District remains seriously opposed to this and any other policy that would further impair the efficiency of the project for irrigation purposes.

In addition to these and the attached comments, the District wishes to incorporate by reference the comments provided you by and on behalf of Westlands Water District.

Your thoughtful consideration of these comments is appreciated.

Sincerely,



William D. Harrison  
General Manager

Cc: Board of Directors  
Ernest Conant, Esq.  
Tom Birmingham, Westlands Water District